

IN THE HIGH COURT OF GUJARAT
AHMEDABAD

CIVIL REVISION APPLICATION NO.1848 OF 1995

Date of Decision: 22nd January, 1996

For Approval and Signature:

Hon'ble Mr. Justice : S.D. SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a su..

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question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr.P.V. Nanavati, Advocate for applicant
Respondents No. 1 & 3 to 6 are served
Respondent No. 7 unserved as not found
Respondent No. 2 minor

Coram: S.D. SHAH, J.
Date : 22 January, 1996

ORAL JUDGMENT:

1. This Civil Revision Application is filed by the Insurance Company against the judgment and order of Motor

Accident Claims Tribunal, whereby on an application made under Section 140 of the Motor Vehicles Act, 1988 at Exhibit 4 in Motor Accident Claim Petition No. 246 of 1993, the Tribunal has by judgment and decree dated 21st of June, 1995, directed the opponent to pay jointly and severally a sum of Rs. 50,000/- by way of interim compensation based on 'no fault liability' with 15 per cent interest per annum from the date of the application till payment.

2. At the hearing of this petition, it was submitted before this Court by Mr. P.V. Nanavati learned Counsel appearing for the Insurance Company that the accident has admittedly taken place on 22nd of November, 1992 and in such accident Vandanaben Girishbhai Trivedi expired. The heirs and legal representatives of said Vandanaben Girishbhai Trivedi thereupon instituted the Motor Accident Claim Petition No. 246 of 1993. On the date of the accident as well as on the date of the petition, the provision of Section 140 of the Motor Vehicles Act 1988 reads as under :

Sec.140. Liability to pay compensation in certain cases on the principle of no fault - (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of twenty-five thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be fixed sum of twelve thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other persons.

- (4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

3. In the aforesaid provision the amount which could have been awarded in case of death of a person by way of interim compensation, then stipulated by the legislative provision was Rs. 25,000/-. It is no doubt true that the said amount is subsequently enhanced to Rs. 50,000/- by the amendment Act No. 54 of 1994, which has come into force from 14th of November, 1994. This Court has in the case of GUJARAT STATE ROAD TRANSPORT CORPORATION v. DECEASED KASHIBEN, reported in 1993 (2) GLH 11, has taken the view that when the accident in question has taken place before the amendment of the Act came into force, the provision of the old Act would apply. The amending Act, which has come into force from November, 1994 has however not provided that such amendment shall have retrospective effect or shall apply irrespective of the date of accident. The relevant date being the date of accident, the entitlement of a person to receive interim compensation shall have to be decided by reference to the date of accident. Here, in fact, by the Amendment, the liability to deposit the amount is enhanced from Rs. 25,000/- to Rs. 50,000/- in case of death and from Rs. 12,000/- to Rs. 25,000/- in case of permanent/partial disability. Since there is increase in liability, the said piece of legislation cannot be given the retrospective effect and the date of accident being the relevant date, the provision applicable as on the date of the application stipulated the payment of Rs. 25,000/- only in case of death of a person. If on the date of the accident, Section 140 of the Act of 1988 made provision for interim compensation of Rs. 25,000/- only, in case of death, the Tribunal could not have awarded the amount of Rs. 50,000/- by way of interim compensation. In view of the aforesaid settled legal position and in view of the fact that the amending Act has not been given retrospective effect, the judgment and order of the Tribunal shall have to be modified so as to direct the present applicant and the other opponents in the Claim Petition shall jointly and severally deposit the amount of Rs. 25,000/- (Rupees twenty five thousand only) before Tribunal with 15 per cent interest from the date of the application till payment.

4. In view of the aforesaid, this Civil Revision Application is partially allowed. Rule is partially made absolute to the aforesaid extent only. There shall be no order as to costs.
